

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: February 19, 2003

Division: Management Services

Bulk Item: Yes X No

Department: Admin'e Services – Employee Benefits

AGENDA ITEM WORDING: Approval of Business Associate Addendum with WHP Health Initiatives, Inc. d/b/a Walgreens Health Initiatives. Agreement covers security of Protected Health Information. This does not change Prescription Benefits received by Employees in any manner.

ITEM BACKGROUND: Privacy Regulations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) require we enter into Business Associate Agreements with our providers of Health Care Services to regulate and formalize the handling, reporting, dispensing, and security of Protected Health Information. The Deadline for completion of these agreements is April 2003.

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES: New Provisions covered under Health Insurance Portability and Accountability Act of 1996 (HIPAA).

STAFF RECOMMENDATIONS: Approval

TOTAL COST: This Agreement None (Pharmaceutical Benefit \$1.5 Million Annually)

BUDGETED: Yes No

COST TO COUNTY: None **SOURCE OF FUNDS:** na

REVENUE PRODUCING: Yes No **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty X OMB/Purchasing X Risk Management X

DIVISION DIRECTOR APPROVAL:


Sheila A. Barker

DOCUMENTATION: Included X To Follow Not Required

DISPOSITION:

AGENDA ITEM # D39

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: WHP Health Initiatives Contract # _____
 Effective Date: Upon Approval
 Expiration Date: _____

Contract Purpose/Description:

Agreement with our provider of Health Care Services to regulate and formalize the handling, reporting, dispensing, and security of Protected Health Information

Contract Manager: Maria Fernandez 4448 Employee Benefits - #8
 (Name) (Ext.) (Department/Stop #)

for BOCC meeting on February 19, 2003 Agenda Deadline: February 5, 2003

CONTRACT COSTS

Total Dollar Value of Contract: \$ None Current Year Portion: \$ _____
 Pharmacy Benefits \$1.4 million annually
 Budgeted? Yes ☐ No ☐ Account Codes: _____
 Grant: \$ _____
 County Match: \$ _____

ADDITIONAL COSTS

Estimated Ongoing Costs: \$ _____/yr For: _____
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Sheila A. Barker</u>	<u>2-5-03</u>
Risk Management		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Bill Guha</u>	<u>2/5/03</u>
O.M.B./Purchasing		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Sheila A. Barker</u>	<u>2-5-03</u>
County Attorney		Yes <input type="checkbox"/> No <input type="checkbox"/>	_____	_____

Comments: _____

Walgreens
HEALTH
INITIATIVES

Pharmacy Benefit Management

Specialty Pharmacy

Home Respiratory Services

Home Infusion Services

Home Medical Equipment

Phone: (847) 964-8319

Fax: (847) 374-2645

January 2003

RE: Business Associate Agreement

Dear Client:

WHP Health Initiatives, Inc. d/b/a Walgreens Health Initiatives, as a prescription benefit manager, is a "Business Associate" for your organization, as defined in the Health Insurance Portability & Accountability Act's (HIPAA) regulations.

As your PBM, we will be obtaining and using prescription and other healthcare information in carrying out our duties as your chosen PBM under the forthcoming Prescription Service Agreement. However, in advance of the Prescription Service Agreement, we have enclosed a Business Associate Agreement (referred to in the Prescription Service Agreement and attached document as "Addendum") that details our policies on the use of patient information.

In order to expedite the agreement process and to help you be in full compliance with HIPAA regulations, we ask that you review the document and verify the legal entity ("covered entity") name on the document. If the legal entity name is incorrect, please make any corrections on the document itself. We encourage you to sign the document and return it to my attention at the address below. Once we have received the signed document, we will have a representative of WHP Health Initiatives, Inc. also sign the document and then a copy of the fully executed document will be sent to you for your files.

Thank you for your cooperation and assistance. If you have any questions, please contact me at the number below.

Sincerely,

Mary B. Rosenquist
Mary B. Rosenquist
Walgreens Health Initiatives, Paralegal
1417 Lake Cook Road, MS L468
Deerfield, IL 60015
847/964-8319

Enclosure

*To: Sheila Barker -
Needs to go to BOCC*

*D3 + E are the key
provisions we need in all
similar BA addenda.*

1417 Lake Cook Road
Deerfield, Illinois 60015-5223
847-374-2640 • 847-374-2645

www.walgreenshealth.com

BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Agreement Addendum (the "Addendum"), entered into by and between the health plan ("Covered Entity") of Monroe County Board of County Commissioners ("Plan Sponsor"), and WHP Health Initiatives, Inc. d/b/a Walgreens Health Initiatives, a Business Associate ("BA"), supplements and is made a part of the Prescription Services Agreement ("Agreement") entered into between BA and Plan Sponsor, and is effective no later than April 14, 2003 or such other date as regulations may require (the "Addendum Effective Date"). If the compliance date that is applicable to the Covered Entity as established in the Privacy Regulations is extended or otherwise delayed, in its sole and absolute discretion, the Covered Entity may elect to similarly extend or otherwise delay the Privacy Compliance Date. If the Covered Entity does not make such an election, BA obligations shall remain unchanged and in full force and effect.

WITNESSETH:

WHEREAS, Covered Entity and BA have entered into an Agreement whereby BA provides prescription benefit management services to Covered Entity;

WHEREAS, Covered Entity wishes to disclose and/or make available certain information to BA pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI");

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws;

WHEREAS, the purpose of this Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("C.F.R."), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Addendum, the following terms have the meanings ascribed to them:

- (1) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.
- (2) "Individual" shall mean the person who is the subject of the Protected Health Information.
- (3) "Parties" shall mean Covered Entity and BA.
- (4) "Protected Health Information" or "PHI" shall mean any information created or received by Covered Entity, or another entity acting on Covered Entity's behalf, or by BA in the performance of its services on behalf of Covered Entity, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

B. Stated Purpose for Which BA May Use or Disclose PHI. The Parties hereby agree that except as otherwise limited in this Addendum, BA shall be permitted to use or disclose PHI provided or made available from Covered Entity to perform any function, activity or service for, or on behalf

of, Covered Entity as specified in the Agreement or in this Addendum, provided that such use or disclosure would not violate the HIPAA Regulations if done by Covered Entity. Covered Entity acknowledges that BA intends to make PHI available to the subject Individual via its website, using BA's customized online registration process for each such Individual. BA also may make PHI available to Covered Entity or other permitted third party via the Internet or other electronic medium. Covered Entity will notify BA in writing at the notice address stated herein if it wishes to limit such communications.

C. BA Obligations. BA covenants and agrees that it shall:

- (1) Not further use or disclose the PHI provided or made available by Covered Entity other than as permitted or required by this Addendum or as required by applicable law or regulation.
- (2) Establish and maintain appropriate safeguards as necessary to prevent the use or disclosure of PHI other than as permitted under this Addendum.
- (3) Report to Covered Entity any use or disclosure of PHI that BA is aware of that is not provided for or allowed by this Addendum.
- (4) Ensure that any of its agents or subcontractors, or other third parties with which BA does business that are provided PHI on behalf of Covered Entity, are aware of and bound to BA's obligations under this Addendum.
- (5) Make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity's obligations to provide access to, amendment of, and account for disclosures with respect to PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR §§164.524, 164.526, and 164.528.
- (6) Make available to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records relating to the use and disclosure of PHI received from, or created by, the BA on behalf of the Covered Entity, for purposes of determining Covered Entity's compliance with federal privacy laws and regulations.

D. Permitted Disclosures. Notwithstanding Article C(1), above, Parties agree that, pursuant to federal law, BA may:

- (1) Use PHI in its possession, for its proper management and administration and to fulfill any of its present or future legal responsibilities provided that such uses are permitted under state and federal confidentiality laws.
- (2) Use PHI in its possession to provide data aggregation services relating to the health care operations, as provided for in 45 C.F.R. § 164.501, of the Covered Entity.
- (3) Disclose PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any of its present or future legal responsibilities provided that (i) the disclosures are required by law, as provided for in 45 C.F.R. § 164.501, or (ii) BA has received from the third party written assurances that the PHI will be held confidentially, that the PHI will only be used or further disclosed as required by law or for the purpose for which it was disclosed to the third party, and that the third party will notify BA of any instances of which it is aware in which the confidentiality of the information has been breached, as required under 45 C.F.R. § 164.504(e)(4).
- (4) De-identify any and all PHI provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b), and further provided that the Covered Entity maintains the documentation required by 45 C.F.R. § 164.514(b), which may be in the form of a written assurance from BA.

Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute PHI and is not subject to the terms of this Addendum.

E. Obligations of Covered Entity. No later than the effective date of this Agreement, Covered Entity will provide BA with a copy of Plan Sponsor's certification that the health plan meets and will abide by all HIPAA requirements. With respect to the use and/or disclosure of PHI by BA, the Covered Entity hereby agrees:

(1) to use appropriate safeguards to maintain and ensure the confidentiality, privacy, and security of PHI transmitted to BA pursuant to the Agreement, in accordance with the standards and requirements of HIPAA and the HIPAA Regulations, until such PHI is received by BA.

(2) to inform BA of any changes in, or withdrawal of, the consent or authorization provided to the Covered Entity by individuals pursuant to 45 C.F.R. § 164.506 or § 164.508.

(3) to notify BA, in writing and in a timely manner, of any arrangements permitted or required of the Covered Entity under 45 C.F.R. Parts 160 and 164 that may impact in any manner the use and/or disclosure of PHI by BA under the Agreement, including, but not limited to, restrictions on the use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by the Covered Entity.

(4) that BA may make any use and/or disclosure of PHI permitted under 45 C.F.R. § 164.512.

F. Termination. Notwithstanding any other provision under the Agreement and pursuant to federal law, each Party agrees that the Agreement may be terminated by the other Party without penalty should the other Party violate a material obligation under this Addendum.

G. Return or Destruction of PHI. Upon termination or expiration of the Agreement, BA shall return to Covered Entity, upon request, any and all PHI received from, or created by, BA on behalf of Covered Entity that is maintained by BA in any form whatsoever, including any copies or replicas. If returning the PHI to Covered Entity is not feasible, BA shall destroy any and all PHI maintained by BA in any form whatsoever, including any copies or replicas. Should the return or destruction of the PHI be determined by BA to be contrary to BA's legal or operational interests or otherwise not feasible, the Parties agree that the terms of this Addendum shall extend to the PHI for such time as BA deems necessary, and any further use or disclosure of the PHI by BA shall be limited to that purpose which renders the return or destruction of the PHI infeasible.

H. Amendment to Comply with Law. The Parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The Parties agree to take such action as is necessary to comply with the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws relating to the security or confidentiality of PHI. Upon either Party's request, the other Party agrees to promptly to enter into negotiations concerning the terms of an amendment to this Addendum.

I. Indemnification. Each Party agrees to indemnify, defend and hold harmless the other Party, its affiliates and each of their respective directors, officers, employees, agents or assigns from and against any and all actions, causes of action, claims, suits and demands whatsoever, and from all damages, liabilities, costs, charges, debts, and expenses whatsoever (including reasonable attorneys' fees and expenses related to any litigation or other defense of any claims), which may be asserted or for which they may now or hereafter become subject arising in connection with (i) any misrepresentation, breach of warranty or non-fulfillment of any undertaking on the part of the Party under the Addendum; and (ii) any claims, demands, awards, judgments, actions, and proceedings made by any person or organization arising out of or in any way connected with the Party's performance under the Addendum.

J. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

K. Term. This Addendum shall become effective on the Addendum Effective Date and shall expire when all of the PHI provided by Covered Entity to BA is destroyed or returned to Covered Entity pursuant to Section G. The Parties agree that Sections B, C, D, E, and I of the Addendum shall survive the termination or expiration of the Agreement. In the event of a conflict between this Addendum and other terms and conditions agreed to by the parties, the terms of this Addendum shall control with respect to its subject matter.

L. Parties to Agreement. Covered Entity and BA acknowledge and agree that they are the Parties to this Addendum and to the Agreement, and, to the extent such Parties are not so identified in the Agreement, the Agreement is hereby amended accordingly.

IN WITNESS WHEREOF, the Parties have caused this Addendum to be signed and delivered by their duly authorized representatives, as of the Addendum Effective Date.

COVERED ENTITY
By Plan Administrator

BUSINESS ASSOCIATE:
WHP Health Initiatives, Inc. d/b/a Walgreens Health Initiatives

By: _____

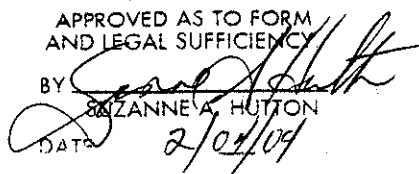
By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY 
SUZANNE A. HUTTON
DATE 2/04/04